

CONTRACT SUPPLEMENT

STATUTORY PROVISIONS FOR MASSACHUSETTS PUBLIC CONSTRUCTION CONTRACTS

The following provisions are required by or are intended to be consistent with requirements of Massachusetts statutes governing public works construction contracts in the Commonwealth of Massachusetts. Any other provisions required by statute to be included herein shall be deemed to be so included, and are incorporated herein by reference as if set forth herein in full. In addition, the parties recognize that the other rights, duties and obligations with respect to public construction contracts are provided for by statute, notwithstanding the fact that they are not provided for in the Contract Documents. In the case of conflict between the provisions in the Contract Documents, the provisions of this Contract Supplement shall govern. In the case of conflict between the provisions of this Contract Supplement and the provisions of any applicable statute, the statutory provisions shall govern.

Each of the Owner and the Contractor agree, notwithstanding any other term or provision of the Contract Documents, as follows:

1. Definitions. Pursuant to the provisions added to the Contract Documents by this Contract Supplement as required by applicable provisions of the Massachusetts General Laws the terms "awarding authority" and "contracting authority" shall mean the Owner, the term "Commonwealth" shall mean the "Commonwealth of Massachusetts, the terms "contract" and "contract documents" shall mean the Contract Documents, the term "contractor" and "general contractor" shall mean the Contractor, the term "contract amount", "contract sum" and "contract price" all mean the same and shall mean Contract Amount, Contract Sum or Contract Price as used in the Contract Documents, the term "Commissioner", "Commissioner of Labor and Industries" and "Department of Labor and Industries" shall mean said Commissioner and said Department and their successors from time to time including the Massachusetts Attorney General's Office as successor thereto pursuant to Chapter 110 of the Massachusetts Acts of 1993, the term "subcontractor" shall mean any and all Subcontractors and the term "work" shall mean the Work on the Project.

2. Representations and Certifications of the Contractor. By executing the Contract Documents, the Contractor represents and certifies that:

(a) The Contractor has visited the site, familiarized himself with the local conditions under which the Work is to be performed, and correlated his observations with the requirements of the Work.

(b) The Contractor either (i) is not a foreign corporation pursuant to Chapter 30, Section 39L of the Massachusetts General Laws/or (ii) is a foreign corporation in compliance with Massachusetts General Laws Chapter 30, Section 39L and Chapter 181, Sections 3 and 5 and shall maintain such compliance throughout Work on the Project.

(c) The Contractor is a qualified contractor, has complied with the bidding process for the Work, has complied with the provisions of Chapter 30, Section 39M of the Massachusetts General Law, and is able to furnish labor that can work in harmony with all other elements of labor employed or to be employed in connection with the Work.

(d) The Contractor has filed a statement of management on internal accounting controls in compliance with Chapter 30, Section 39R(8)(b)(4) of the Massachusetts General Laws.

3. Compliance with Tax Laws. By executing the Contract Documents, the Contractor certifies under the pains and penalties of perjury pursuant to Chapter 62C, Section 49A(b) of the Massachusetts General Laws that the Contractor has complied with all of the laws of the Commonwealth of Massachusetts relating to taxes.

4. Compliance with Accounting and Record Keeping Requirements. The Contractor will comply with all accounting and record keeping requirements of Chapter 30, Section 39R of the Massachusetts General Laws.

5. Contract Administration.

5.1. "Or Equal" Clause. In accordance with Massachusetts General Laws Chapter 30, Section 39M:

Where products or materials are prescribed by manufacturer name, trade name, or catalog reference, the word "or approved equal" shall be understood to follow. An item shall be considered equal to the item so named or described if, in the opinion of the awarding authority:

- (a) it is at least equal in quality, durability, appearance, strength and design;
- (b) it performs at least equally the function imposed by the general design for the Work; and
- (c) it conforms substantially, even with deviations, to the detailed requirements for the items as indicated by the Specifications.

Any structural or mechanical changes made necessary to accommodate substituted equipment under this paragraph shall be at the expense of the Contractor or Subcontractor responsible for the work item. See other paragraphs of General and Supplementary Conditions for procedures to be used in determining compliance with the standards of this paragraph.

5.2. Interruptions and Delays. In accordance with Massachusetts General Laws Chapter 30, Section 39O:

(a) The awarding authority may order the Contractor in writing to suspend, delay, or interrupt all or any part of the work for such period of time as it may determine to be appropriate for the convenience of the awarding authority; provided, however, that if there is a suspension, delay or interruption for fifteen days or more or due to a failure of the awarding authority to act within the time specified in this contract, the awarding authority shall make an adjustment in the contract price for any increase in the cost of performance of this contract but shall not include any profit to the Contractor on such increase; and provided further, that the awarding authority shall not make any adjustment in the contract price under these provisions for any suspension, delay, interruption or failure to act to the extent that such is due to any cause for which this contract provides for an equitable adjustment of the contract price under any other contract provisions.

(b) The Contractor must submit the amount of a claim under provision (a) to the awarding authority in writing as soon as practicable after the end of the suspension, delay, interruption or failure to act and, in any event, not later than the date of final payment under this contract and, except for costs due to a suspension order, the awarding authority shall not approve any costs in the claim incurred more than twenty days before the Contractor notified the awarding authority in

writing of the act or failure to act involved in the claim.

In the event a suspension, delay, interruption, or failure to act of the awarding authority increases the cost of performance to any Subcontractor, that Subcontractor shall have the same rights against the Contractor for payment for an increase in the cost of his performance as provisions (a) and (b) give the Contractor against the awarding authority, but nothing in provisions (a) and (b) shall in any way change, modify, or alter any other rights which the Contractor or the Subcontractor may have against each other.

Except as otherwise provided by law and by this Section 5.2, the Contractor shall not be entitled to damages on account of any hindrances or delays, avoidable or unavoidable; but if such delay be occasioned by the awarding authority, the Contractor may be entitled to an extension of time only, in which to complete the work, to be determined by the Engineer.

5.3. Deviations. In accordance with Massachusetts General Laws Chapter 30, Section 39I:

The Contractor shall perform all the work required by this contract in conformity with the plans and specifications contained herein. No willful and substantial deviation from said plans and specifications shall be made unless authorized in writing by the awarding authority or by the Engineer or Engineer in charge of the work who is duly authorized by the awarding authority to approve such deviations. In order to avoid delays in the prosecution of the work required by this contract such deviation from the plans or specifications may be authorized by a written order of the awarding authority or the Engineer or Engineer so authorized to approve such deviation. Within thirty days thereafter, such written order shall be confirmed by a certificate of the awarding authority stating: (1) If such deviation involves any substitution or elimination of materials, fixtures or equipment, the reasons why such materials, fixtures or equipment were included in the first instance and the reasons for substitution or elimination, and, if the deviation is of any other nature, the reasons for such deviation, giving justification therefor; (2) that the specified deviation does not materially injure the project as a whole; (3) that either the work substituted for the work specified is of the same costs and quality, or that an equitable adjustment has been agreed upon between the awarding authority and the Contractor and the amount in dollars of said adjustment, and (4) that the deviation is in the best interest of the awarding authority.

Such certificates shall be signed under the penalties of perjury and shall be a permanent part of the file record of the work contracted for.

5.4. Finality of Decisions by Awarding Authority or Engineer. In accordance with Massachusetts General Laws Chapter 30, Section 39J:

Notwithstanding any contrary provision of this contract, no decision by the awarding authority or the Engineer on a dispute, whether of fact or of law, arising under this contract shall be final or conclusive if such decision is made in bad faith, fraudulently, capriciously, or arbitrarily, is unsupported by substantial evidence, or is based upon error of law.

5.5. Differing Site Conditions. In accordance with Massachusetts General Laws Chapter 30, Section 39N:

If, during the progress of the work, the Contractor or the awarding authority discovers that the actual subsurface or latent physical conditions encountered at the site differ substantially or materially from those shown on the plans or indicated in the Contract Documents, either the Contractor or the awarding authority may request an equitable adjustment in the contract price of the contract applying to work affected by the differing site conditions. A request for such an adjustment shall be in writing and shall be delivered by the party making such claim to the other party as soon as possible after such conditions are discovered. Upon receipt of such a claim from a Contractor, or upon its own initiative, the awarding authority shall make an investigation of such physical conditions, and, if they differ substantially or materially from those shown on the plans or indicated in the Contract Documents or from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the plans and Contract Documents and are of such a nature as to cause an increase or decrease in the cost of performance of the work or a change in the construction methods required for the performance of the work which results in an increase or decrease in the cost of the work, the awarding authority shall make an equitable adjustment in the contract price and the contract shall be modified in writing accordingly.

The Owner may adopt reasonable rules or regulations in conformity with this Section 5.5 concerning the filing, investigation and settlement of such claims and has done so as provided in Section 4.03 of the General Conditions and the Supplementary General Conditions.

5.6. Interpretations by Awarding Authority. In accordance with Massachusetts General Laws Chapter 30, Section 39P:

In every case in which this contract requires the awarding authority, any official or the Engineer to make a decision on interpretation of the specifications, approval of equipment, material or any other approval, or progress of the work, the decision shall be made promptly and, in any event, no later than thirty days after the written submission for decision; but if such decision requires extended investigation and study, the awarding authority, any official or the Engineer shall, within thirty days after the receipt of the submission, give the party making the submission written notice of the reasons why the decision cannot be made within the thirty-day period and the date by which the decision will be made.

6. Appropriations and Payments.

6.1. Certificate of Appropriation. In accordance with Massachusetts General Laws Chapter 44, Section 31C:

This contract shall not be deemed to have been made until the auditor or accountant or other officer of the awarding authority having similar duties has certified thereon that an appropriation in the amount of this contract is available therefor and that an officer or agent of the awarding authority has been authorized to execute said contract and approve all requisitions

and change orders. No order to the Contractor for a change in or addition to the Work, whether in the form of a drawing, plan, detail or any other written instruction, unless it is an order which the Contractor is willing to perform without any increase in the contract price, shall be deemed to be given until the auditor or accountant, or other officer of the awarding authority having similar duties, has certified thereon that an appropriation in the amount of such order is available therefor; but such certificate shall not be construed as an admission by the awarding authority of its liability to pay for such work. The certificate of the auditor or accountant or other officer of the awarding authority having similar duties, that an appropriation in the amount of this contract or order is available shall bar any defense by the awarding authority on the grounds of insufficient appropriation; and any law barring payment in excess of appropriations shall not apply to amounts covered by any certificate under this Section 6.1.

6.2. Direct Payment. In accordance with Massachusetts General Laws Chapter 30, Section 39F:

(a) Forthwith after the Contractor receives payment on account of a periodic estimate, the Contractor shall pay to each Subcontractor the amount paid for the labor performed and the materials furnished by that Subcontractor, less any amount specified in any court proceedings barring such payment and also less any amount claimed due from the Subcontractor by the Contractor.

(b) Not later than the sixty-fifth day after each Subcontractor substantially completes its work in accordance with the plans and specifications, the entire balance due under the subcontract, less amounts retained by the awarding authority as the estimated cost of completing the incomplete and unsatisfactory items of work, shall be due the Subcontractor; and the awarding authority shall pay that amount to the Contractor. The Contractor shall forthwith pay to the Subcontractor the full amount received from the awarding authority less any amount specified in any court proceedings barring such payment and also less any amount claimed due from the Subcontractor by the Contractor.

(c) Each payment made by the awarding authority to the Contractor pursuant to clauses (a) and (b) of this Section 6.3 for the labor performed and the materials furnished by a Subcontractor shall be made to the Contractor for the account of that Subcontractor; and the awarding authority shall take reasonable steps to compel the Contractor to make each such payment to each such Subcontractor. If the awarding authority has received a demand for direct payment from a Subcontractor for any amount which has already been included in a payment to the Contractor or which is to be included in a payment to the Contractor for payment to the Subcontractor as provided in clauses (a) and (b) of this Section 6.3, the awarding authority shall act upon the demand as provided in this Section 6.3.

(d) If, within seventy days after the Subcontractor has substantially

completed the subcontract work, the Subcontractor has not received from the Contractor the balance due under the subcontract including any amount due for extra labor and materials furnished to the Contractor, less any amount retained by the awarding authority as the estimated cost of completing the incomplete and unsatisfactory items of work, the Subcontractor may demand direct payment of that balance from the awarding authority. The demand shall be a sworn statement delivered to or sent by certified mail to the awarding authority, and a copy shall be delivered to or sent by certified mail to the Contractor at the same time. The demand shall contain a detailed breakdown of the balance due under the subcontract and also a statement of the status of completion of the subcontract work. Any demand made after substantial completion of the subcontract work shall be valid even if delivered or mailed prior to the seventieth day after the Subcontractor has substantially completed the subcontract work. Within ten days after the Subcontractor has delivered or so mailed the demand to the awarding authority and delivered or so mailed a copy to the Contractor, the Contractor may reply to the demand. The reply shall be by a sworn statement delivered to or sent by certified mail to the awarding authority and a copy shall be delivered to or sent by certified mail to the Subcontractor at the same time. The reply shall contain a detailed breakdown of the balance due under the subcontract, including any amount due for extra labor and materials furnished to the Contractor and of the amount due for each claim made by the Contractor against the Subcontractor.

(e) Within fifteen days after receipt of the demand by the awarding authority, but in no event prior to the seventieth day after substantial completion of the subcontract work, the awarding authority shall make direct payment to the Subcontractor of the balance due under the subcontract, including any amount due for extra labor and materials furnished to the Contractor, less any amount (i) retained by the awarding authority as the estimated cost of completing the incomplete or unsatisfactory items of work, (ii) specified in any court proceedings barring such payment, or (iii) disputed by the Contractor in the sworn reply; provided that the awarding authority shall not deduct from a direct payment any amount as provided in part (iii) if the reply is not sworn to, or for which the sworn reply does not contain the detailed breakdown required by clause (d) of this Section 6.3. The awarding authority shall make further direct payments to the Subcontractor forthwith after the removal of the basis for deductions from direct payments made as provided in parts (i) and (ii) of this clause (e).

(f) The awarding authority shall forthwith deposit the amount deducted from a direct payment as provided in part (iii) of clause (e) of this Section 6.3 in an interest-bearing joint account in the names of the Contractor and the Subcontractor in a bank in Massachusetts selected by the awarding authority or agreed upon by the Contractor and the Subcontractor and shall notify the Contractor and the Subcontractor of the date of the deposit and the bank receiving the deposit. The bank shall pay the amount in the account, including accrued

interest, as provided in an agreement between the Contractor and the Subcontractor or as determined by decree of a court of competent jurisdiction.

(g) All direct payments and all deductions from demands for direct payments deposited in an interest-bearing account or accounts in a bank pursuant to clause (f) of this Section 6.3 shall be made out of amounts payable to the Contractor at the time of receipt of a demand for direct payment from a Subcontractor and out of amounts which later become payable to the Contractor and in the order of receipt of such demands from Subcontractors. All direct payments shall discharge the obligation of the awarding authority to the Contractor to the extent of such payment.

(h) The awarding authority shall deduct from payments to a Contractor amounts which, together with the deposits in interest bearing accounts pursuant to clause (f) of this Section 6.3, are sufficient to satisfy all unpaid balances of demands for direct payment received from Subcontractors. All such amounts shall be earmarked for such direct payments, and the Subcontractors shall have a right in such deductions prior to any claims against such amounts by creditors of the Contractor.

6.3. Substantial Completion. In accordance with Massachusetts General Laws Chapter 30, Section 39G:

The Contractor shall present in writing to the awarding authority its certification that the work has been substantially completed. Within twenty-one days thereafter, the awarding authority shall present to the Contractor either a written declaration that the work has been substantially completed or an itemized list of incomplete or unsatisfactory work items required by the contract sufficient to demonstrate that the work has not been substantially completed. The awarding authority may include with such list a notice setting forth a reasonable time, which shall not in any event be prior to the contract completion date, within which the Contractor must achieve substantial completion of the work. In the event that the awarding authority fails to respond, by presentation of a written declaration or itemized list as aforesaid, to the Contractor's certification within the twenty-one day period, the Contractor's certification shall take effect as the awarding authority's declaration that the work has been substantially completed.

Within sixty-five days after the effective date of a declaration of a substantial completion, the awarding authority shall prepare and forthwith send to the Contractor for acceptance a substantial completion estimate for the quantity and price of the work done and all but one per cent retainage on that work, including the quantity, price and all but one per cent retainage for the undisputed part of each work item and extra work item in dispute but excluding the disputed part thereof, less the estimated cost of completing all incomplete and unsatisfactory work items and less the total periodic payments made to date for the work. The awarding authority also shall deduct from the substantial completion estimate an amount equal to the sum of all demands for direct payment filed by Subcontractors and not yet paid to Subcontractors or deposited in joint

accounts pursuant to section thirty-nine F of Chapter 30, but no contract subject to said section thirty-nine F of Chapter 30 shall contain any other provision authorizing the awarding authority to deduct any amount by virtue of claims asserted against the contract by Subcontractors, material suppliers or others.

If the awarding authority fails to prepare and send to the Contractor any substantial completion estimate required by this section on or before the date herein above set forth, the awarding authority shall pay to the Contractor interest on the amount which would have been due to the Contractor pursuant to such substantial completion estimate at the rate of three percentage points above the rediscount rate then charged by the Federal Reserve Bank of Boston from such date to the date on which the awarding authority sends that substantial completion estimate to the Contractor for acceptance or to the date of payment therefor, whichever occurs first. The awarding authority shall include the amount of such interest in the substantial completion estimate.

Within fifteen days after the effective date of the declaration of substantial completion, the awarding authority shall send to the Contractor by certified mail, return receipt requested, a complete list of all incomplete or unsatisfactory work items, and, unless delayed by causes beyond his control, the Contractor shall complete all such work items within forty-five days after the receipt of such list or before the then contract completion date, whichever is later. If the Contractor fails to complete such work within such time, the awarding authority may, subsequent to seven days' written notice to the Contractor by certified mail, return receipt requested, terminate the contract and complete the incomplete or unsatisfactory work items and charge the cost of same to the Contractor.

Within thirty days after receipt by the awarding authority of a notice from the Contractor stating that all of the work required by the contract has been completed, the awarding authority shall prepare and forthwith send to the Contractor for acceptance a final estimate for the quantity and price of the work done and all retainage on that work less all payments made to date, unless the awarding authority's inspection shows that work items required by the contract remain incomplete or unsatisfactory, or that documentation required by the contract has not been completed. If the awarding authority fails to prepare and send to the Contractor the final estimate within thirty days after receipt of notice of completion, the awarding authority shall pay to the Contractor interest on the amount which, would have been due to the Contractor pursuant to such final estimate at the rate hereinabove provided from the thirtieth day after such completion until the date on which the awarding authority sends the final estimate to the Contractor for acceptance or the date of payment therefor, whichever occurs first, provided that the awarding authority's inspection shows that no work items required by the contract remain incomplete or unsatisfactory. Interest shall not be paid hereunder on amounts for which interest is required to be paid in connection with the substantial completion estimate as hereinabove provided. The awarding authority shall include the amount of the interest required to be paid hereunder in the final estimate.

The awarding authority shall pay the amount due pursuant to any substantial completion or final estimate within thirty-five days after receipt of written acceptance for such estimate from the Contractor and shall pay interest on the amount due pursuant to such estimate at the rate hereinabove provided from that thirty-fifth day to the date of payment. Within 15 days, 30 days in the case of the commonwealth, after receipt from the Contractor, at the place designated by the awarding authority, if such place is so designated, of a periodic estimate requesting payment of the amount due for the preceding periodic estimate period; the awarding authority shall make a periodic payment to the Contractor for the work performed during the preceding periodic estimate period and for the materials not incorporated in the work but delivered and suitably stored at the site, or at some location agreed upon in writing, to which the Contractor has title or to which a subcontractor has title and has authorized the Contractor to transfer title to the awarding authority, upon certification by the Contractor that he is the lawful owner and that the materials are free from all encumbrances. The awarding authority shall include with each such payment interest on the amount due pursuant to such periodic estimate at the rate herein above provided from the due date. In the case of periodic payments, the awarding authority may deduct from its payment a retention based on its estimate of the fair value of its claims against the Contractor, a retention for direct payments to Subcontractors based on demands for same in accordance with the provisions of section thirty-nine F of Chapter 30, and a retention to secure satisfactory performance of the contractual work not exceeding five per cent of the approved amount of any periodic payment, and the same right to retention shall apply to bonded Subcontractors entitled to direct payment under section thirty-nine F of chapter thirty; provided, that a five per cent value of all items that are planted in the ground shall be deducted from the periodic payments until final acceptance.

No periodic, substantial completion or final estimate or acceptance or payment thereof shall bar a Contractor from reserving all rights to dispute the quantity and amount of, or the failure of the awarding authority to approve a quantity and amount of, all or part of any work item or extra work item.

Substantial completion, for the purposes of this section, shall mean either that the work required by the contract has been completed except for work having a contract price of less than one per cent of the then adjusted total contract price, or substantially all of the work has been completed and opened to public use except for minor incomplete or unsatisfactory work items that do not materially impair the usefulness of the work required by the contract.

7. Wages and Employment Practices.

7.1. Preference to Veterans and Citizens In Public Work; Rate of Wages. In accordance with Massachusetts General Laws Chapter 149, Section 26:

(a) In the employment of mechanics and apprentices, teamsters, chauffeurs and laborers by the Contractor and all Subcontractors, preference shall first be given to citizens of the Commonwealth who have been residents of the Commonwealth for at least six months at the commencement of their

employment, who are male veterans as defined in Massachusetts General Laws Chapter 4, Section 7, clause 43, and who are qualified to perform the work to which the employment relates; and secondly, to citizens of the Commonwealth generally who have been residents of the Commonwealth for at least six months at the commencement of their employment, and if they cannot be obtained in sufficient numbers, then to citizens of the United States, and every contract for such work shall contain a provision to this effect. Each county, town, authority or district in the construction of public works, or persons contracting or subcontracting for such works, shall give preference to veterans and citizens who are residents of such county, town, authority or district.

(b) The rate per hour of the wages paid to said mechanics and apprentices, teamsters, chauffeurs and laborers in the construction of public works shall not be less than the rate or rates of wages to be determined by the Commissioner of Labor and Industries as hereinafter provided; provided, that the wages paid to laborers employed on said works shall not be less than those paid to laborers in the municipal service of the town or towns where said works are being constructed; provided, further, that where the same public work is to be constructed in two or more towns, the wages paid to laborers shall not be less than those paid to laborers in the municipal service of the town paying the highest rate; provided, further, that if, in any of the towns where the works are to be constructed, a wage rate or wage rates have been established in certain trades and occupations by collective agreements or understandings in the private construction industry between organized labor and employers, the rate or rates to be paid on said works shall not be less than the rates so established; provided, further, that in towns where no such rate or rates have been so established, the wages paid to mechanics, teamsters, chauffeurs and laborers on public works, shall not be less than the wages paid to the employees in the same trades and occupations by private employers engaged in the construction industry. This section shall also apply to regular employees of the Commonwealth or of a county, town, authority or district, when such employees are employed in the construction, addition to or alteration of public buildings for which special appropriations of more than one thousand dollars are provided. Payments by employers to health and welfare plans, pension plans and supplementary unemployment benefit plans under collective bargaining agreements or understandings between organized labor and employers shall be included for the purpose of establishing minimum wage rates as herein provided.

7.2. List of Jobs; Classifications; Determination of Rate of Wages; Schedule.

In accordance with Massachusetts General Laws Chapter 149, Section 27:

The Commissioner of Labor and Industries shall prepare, for the use of such public officials or public bodies whose duty it shall be to cause public works to be constructed, a list of the several jobs usually performed on various types of public works upon which mechanics and

apprentices, teamsters, chauffeurs and laborers are employed including the transportation of gravel or fill to the site of said public works or the removal of surplus gravel or fill from such site. The Commissioner shall classify said jobs, and he may revise such classifications from time to time, as he may deem advisable. Prior to awarding a contract for the construction of public works, said public official or public body shall submit to the Commissioner a list of the jobs upon which mechanics and apprentices, teamsters, chauffeurs and laborers are to be employed, and shall request the Commissioner to determine the rate of wages to be paid on each job. Said rates shall apply to all persons engaged in transporting gravel or fill to the site of said public works or removing gravel or fill from such site, regardless of whether such persons are employed by a contractor or subcontractor or are independent contractors or owner-operators. The Commissioner, subject to the provisions of Section 7.1 of this Contract Supplement, shall proceed forthwith to determine the same, and shall furnish said official or public body with a schedule of such rate or rates of wages as soon as said determination shall have been made. In advertising or calling for bids for said works, the awarding official or public body shall incorporate said schedule in the advertisement or call for bids by an appropriate reference thereto, and shall furnish a copy of said schedule, without cost, to any person requesting the same. Said schedule shall be made a part of the contract for said works and shall continue to be the minimum rate or rates of wages for said employees during the life of the contract. Any person engaged in the construction of said works shall cause a legible copy of said schedule to be kept posted in a conspicuous place at the site of said works during the life of the contract. An apprentice performing work on a project subject to this section shall maintain in his possession an apprentice identification card issued pursuant to section 11W of chapter 23. The aforesaid rates of wages in the schedule of wage rates shall include payments by employers to health and welfare plans, pension plans and supplementary unemployment benefit plans as provided in Section 7.1 of this Contract Supplement, and such payments shall be considered as payments to persons under this section performing work as herein provided. Any employer engaged in the construction of such works who does not make payments to a health and welfare plan, a pension plan and a supplementary unemployment benefit plan, where such payments are included in said rates of wages, shall pay the amount of said payments directly to each employee engaged in said construction. Note: The awarding authority does not guarantee the accuracy of any schedule of wage rates furnished to the Contractor hereunder, and the Contractor shall be responsible for ascertaining the prevailing wages in the area where the work will be performed.

7.3. Employment Records To Be Kept By Contractor, Subcontractors;
Statement Of Compliance. In accordance with Massachusetts General Laws Chapter
149, Section 27B:

Every Contractor, Subcontractor or public body engaged in said public works to which Section 7.2 of this Contract Supplement applies shall keep a true and accurate record of all mechanics and apprentices, teamsters, chauffeurs and laborers employed thereon, showing the name, address and occupational classification of each such employee, and shall promptly furnish to the attorney general or his representative, upon his request, a copy of said record, signed by the employer or his authorized agent under the penalties of perjury. For every week in which an apprentice is employed by a Contractor, Subcontractor or public body subject to this Section, a

photocopy of the apprentice's apprentice identification card, issued pursuant to section 11W of chapter 23, shall be attached to the records submitted under this Section. Such records shall be open to inspection by any authorized representative of the Department of Labor and Industries at any reasonable time, and as often as may be necessary. Every Contractor and Subcontractor required to keep such a record shall submit a copy of said record to the awarding authority directly on a weekly basis.

Each such Contractor, Subcontractor or public body shall preserve its payroll records for a period of three years from the date of completion of the contract.

Each such Contractor, Subcontractor or public body shall furnish to the awarding authority within fifteen days after completion of its portion of the work a statement, executed by the Contractor, Subcontractor, or public body who supervises the payment of wages, in the following form:

STATEMENT OF COMPLIANCE _____, 20__

I, _____ (Name
of signatory party) (Title)
do hereby state:

That I pay or supervise the payment of the persons employed by

(Contractor, Subcontractor or public body)

on the _____
(building or project)

and that all mechanics and apprentices, teamsters, chauffeurs and laborers employed on said project have been paid in accordance with wages determined under the provisions of sections twenty-six and twenty-seven of chapter one hundred and forty-nine of the General Laws.

Signature _____
Title _____

The above mentioned copies of payroll records and statements of compliance shall be available for inspection by any interested party filing a written request to the awarding authority for such inspection and copying.

7.4. Certain Additional Provisions Relating to Prevailing Wages and Employee

Matters.

(a) Attention is called to the Advisory issued by the Office of the Attorney General on April 8, 1994 which provide, among other things, that "(t)he revised statute requires every contractor or subcontractor on public works projects to submit a certified payroll to the awarding authority every week." The Advisory further notes that the Secretary of State and the Attorney General have ruled that "certified weekly payrolls are public records and therefore should be made available to parties on request." The Contractor shall comply with these requirements.

(b) The Contractor and all Subcontractors (excluding any Subcontractors under procurement contracts with the Owner assigned to the Contractor to the extent such procurement contracts so provide) shall maintain and participate in a bona fide apprenticeship training program as defined by M.G.L. Chapter 23, Section 11H and 11I for each apprenticeship trade or occupation represented in his or her work force that is approved by the Division of Apprentice Training of the Department of Labor and Industries and must abide by the apprentice to journeyman ratio for each trade prescribed therein the performance of the Contract Documents.

(c) The Contractor and all Subcontractors (excluding any Subcontractors under procurement contracts with the Owner assigned to the Contractor to the extent such procurement contracts so provide) must furnish and maintain, at its or their expense, hospitalization and medical benefits for all their employees employed on the project and/or coverage at least comparable to the hospitalization and/or medical benefits provided by the health and welfare plans in the applicable craft recognized by M.G.L. Chapter 149 Section 26 in establishing minimum wage rates. Payment in lieu of hospitalization and medical benefits shall not be permitted on this contract. The Contractor and Subcontractor regardless of tier shall furnish the Owner with evidence of hospitalization and medical benefits being furnished to their employees.

(d) The Contractor and all Subcontractors excluding any Subcontractors under procurement contracts with the Owner assigned to the Contractor to the extent such procurement contracts so provide) must properly classify employees as employees rather than independent contractors and treat them accordingly for purposes of workers' compensation insurance coverage, unemployment taxes, social security taxes and income tax withholding in accordance with M.G.L. Chapter 149, Section 148B.

7.5. Wages Paid to Operators of Trucks and Other Equipment. In accordance with Massachusetts General Laws Chapter 149, Section 27F:

Prescribed rates of wages, as determined by the Commissioner of Labor and Industries, shall be paid to the operators of all trucks, vehicles or equipment employed on the Project. Said rates of wages shall be requested of said Commissioner by the awarding authority and shall be furnished by the Commissioner in a schedule containing the classifications of jobs, and the rate of wages to be paid for each job. Said rates of wages shall include payments to health and welfare plans, or, if no such plan is in effect between employers and employees, the amount of such payments shall be paid directly to said operators.

7.6. Reserve Police Officers. In accordance with Massachusetts General Laws Chapter 149, Section 34B:

The Contractor shall pay to any reserve police officer employed by him in any city or town the prevailing rate of wage paid to regular police officers in such city or town.

7.7. Eight-Hour Day, etc. In accordance with Massachusetts General Laws Chapter 149, Sections 30 and 34:

No laborer, worker, mechanic, foreman or inspector working within this Commonwealth in the employ of the Contractor, Subcontractor or other person doing or contracting to do the whole or part of the work contemplated by this contract, shall be required or permitted to work more than eight hours in any one day or more than forty-eight hours in any one week, or more than six days in any one week, except in cases of emergency.

7.8. Lodging, etc. In accordance with Massachusetts General Laws Chapter 149, Section 25:

Every employee under this contract shall lodge, board and trade where and with whom he elects, and neither the Contractor, any Subcontractor nor their respective agents or employees shall, either directly or indirectly, require as a condition of the employment of any person that the employee shall lodge, board or trade at a particular place or with a particular person. This Section 7.7 shall be made a part of all contracts for such employment.

7.9. Worker's Compensation Insurance. In accordance with Massachusetts General Laws Chapter 149, Section 34A.

The Contractor shall, before commencing performance of this contract, provide by insurance for the payment of compensation and the furnishing of other benefits under Massachusetts General Laws Chapter 152 to all persons to be employed under this contract, and the Contractor shall continue such insurance in full force and effect during the term of this contract. Sufficient proof of compliance with this Section 7.8 must be furnished at the time of execution of this contract. Failure to provide and continue in force such insurance as aforesaid shall be deemed a material breach of the contract and shall operate as an immediate termination

thereof. No cancellation of such insurance, whether by the insurer or by the insured, shall be valid unless written notice thereof is given by the party proposing cancellation to the other party and to the awarding authority at least fifteen days prior to the intended effective date thereof, which date shall be expressed in said notice. Such notice shall be provided in accordance with the provisions of Massachusetts General Laws Chapter 149, Section 34A.

8. Miscellaneous.

8.1. Shoring. In accordance with Massachusetts General Laws Chapter 149, Section 129A:

On any construction project carried on by any city, town, county, or other subdivision of the Commonwealth in which a trench is to be dug to a depth of five feet or more, except for trenches for laying of water pipes dug to a depth of six and one-half feet which will be open less than 48 hours, and except for digging of graves, trenches shall be shored and braced in conformity with the rules and regulations for the prevention of accidents in construction operations, as adopted and enforced by the Attorney General.

8.2. Bonding. The Contractor shall provide all bonds required by Massachusetts General Laws Chapter 149, Section 29 and 44E including a performance bond and a labor and materials payment bond for work on the Project all of which shall be in form and substance and issued by a surety satisfactory to the awarding authority. The bonds must be (a) in a form satisfactory to the awarding authority; (b) with a surety company (i) qualified to do business in the Commonwealth under the provisions of Chapter 175 Section 106, (ii) approved by the U.S. Department of Treasury and (iii) acceptable as a surety and reinsurer on federal bonds under Title 31 of the United States Code, sections 9304 to 9308; (c) with a surety company satisfactory to the awarding authority; and (d) conditioned upon the faithful performance by the principal of the agreements contained in the bid.